

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

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In re: *

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Chapter 7

THE MORTGAGE SPECIALISTS, INC. *

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Case No. 19-10889-MAF

Debtor. *

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MOTION TO CONDUCT 2004 EXAM OF MICHAEL J. GILL, JR.

Michael S. Askenaizer, the duly appointed chapter 7 trustee for The Mortgage Specialists, Inc. (the “Debtor”) in the above-captioned chapter 7 case (the “Trustee”), respectfully submits this motion requesting to conduct a Rule 2004 Exam of Michael J. Gill, Jr. in both his individual capacity and as President of Nextgen Mortgage, Inc. and to obtain the books and records of the Debtor from Michael J. Gill, Jr. in advance thereof.

I. INTRODUCTION

To date, the Debtor has failed or otherwise refused to file its Statement Of Financial Affairs, Schedules or even a list of creditors. The Debtor has ignored these bankruptcy proceedings and has otherwise refused to comply with any of this Court’s orders. Upon information and belief, the principal of the Debtor, Michael J. Gill, Sr. (“Gill Sr.”) has fled the jurisdiction or is otherwise in hiding. If this case is to proceed, the Trustee must obtain information about the Debtor and secure the books and records of the Debtor via means other than from Gill Sr.

Based upon records maintained by the New Hampshire Secretary of State, Gill Sr.’s son, Michael Gill, Jr. (“Gill Jr.”) owns and operates the same type of business as the Debtor – a

mortgage brokerage house. Upon information and belief, Gill Jr. and/or his company, Nextgen Mortgage, Inc. (“Nextgen”) is operating from the same three locations that the Debtor did, and, is in possession of, and using, the Debtor’s assets. The Trustee believes that Gill, Jr. and Nextgen are, at the least, in possession of the Debtor’s assets, books and records, but more importantly, could be the successors to the Debtor or are one and same. Accordingly, via this Motion, the Trustee seeks to conduct a 2004 Exam of Gill Jr., as President of Nextgen and in his individual capacity, and compel Gill Jr. to produce the documents listed herein.

II. JURISDICTION AND VENUE

1. The Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(A) and (O).

2. Venue is proper pursuant to 28 U.S.C. §§11408 and 1409.

III. BACKGROUND

3. On June 27, 2019, Dick Anagnost, H. Andrew Crews, and William Greiner (collectively, the “Petitioning Creditors”) filed an involuntary petition under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101 et. seq. (the “Code”) against the Debtor.

4. The Petitioning Creditors each have final judgments against the Debtor that total, in the aggregate, more than \$274 million dollars.

5. On June 27, 2019, a Summons To Debtor In Involuntary Case (the “Involuntary Summons”) was issued by this Court.

6. On June 28, 2019, the Petitioning Creditors served the Involuntary Summons upon a) the Debtor at its corporate headquarters at 2 Main Street, Plaistow, New Hampshire; b)

Jason Lander, at the Debtor's office located at 1031 Gold Street, Manchester, New Hampshire; and, c) Vincent Barbageliu, at the Debtor's office located at 327 Amherst Street, Nashua, New Hampshire.

7. On July 18, 2019, the Debtor also served the Involuntary Summons upon CT Corporation, the Debtor's Registered Agent.

8. Pursuant to the Involuntary Summons, the Debtor was required to file an answer or a motion to the Involuntary Summons on or before July 19, 2019.

9. The Debtor failed or otherwise refused to file an answer or motion to the Involuntary Summons.

10. On July 24, 2019, this Court held a Status Conference and issued an order extending the deadline for the Debtor to contest the involuntary petition to and including August 9, 2019 (the "Order"). This Court also ordered that the Petitioning Creditors serve the Order on the Debtor on or before July 25, 2019.

11. After the Petitioning Creditors made good service of the Order upon the Debtor, the Debtor once again failed or refused to file an answer or a motion to the Involuntary Petition.

12. On August 12, 2019, an Order For Relief was entered under Chapter 7 of the Code.

13. On August 12, 2019, this Court further ordered the Debtor to file its list, as required by Fed. R. Bankr. P. 1007(a)(2), on or before August 19, 2019 and to file its schedules, statement and other documents required by Fed. R. Bankr. P. 1007(b)(1) on or before August 26, 2019 (the "Order Directing Debtor to File").

14. The Order Directing the Debtor To File also stated that:

If the debtor fails to comply, in a timely manner, with these directives, then the Court may: (i) enter an order finding the debtor in contempt and fashion an order designed to coerce the debtor's compliance with this order; (ii) order the trustee, the petitioning creditors, or another person to prepare and file the missing documents, as authorized by Fed. R. Bankr. P. 1007(k); or (iii) enter any other order authorized by 11 U.S.C. § 105(a).

15. On August 13, 2019, Michael S. Askenaizer was appointed as chapter 7 trustee of the Case.

16. After the Debtor failed or otherwise refused to comply with the Order Directing Debtor to File, this Court scheduled a Show Cause Hearing for September 3, 2019.

17. The Debtor failed to appear at the Show Cause Hearing. This Court continued the Show Cause Hearing to September 23, 2019.

18. The Debtor's Section 341 Creditors' Meeting was scheduled for September 10, 2019 (the "Creditors' Meeting"). The Debtor failed or otherwise refused to appear at the Creditors' Meeting.

19. As of the filing of this Motion, the Debtor has failed and/or otherwise refused to file its SOFA, Schedules or even a list of its creditors and has failed to appear at its Creditors' Meeting. The Debtor has ignored these proceedings and has otherwise refused to comply with any of this Court's orders. Upon information and belief, the Trustee believes that the principal of the Debtor, Gill, Sr., has fled the jurisdiction or is otherwise in hiding and has no intention of participating in this bankruptcy case.

IV. SUMMARY OF RELIEF REQUESTED

20. Based upon records maintained by the New Hampshire Secretary of State, Gill Jr. is operating a mortgage brokerage business, Nextgen, in the same locations as the Debtor operated its mortgage brokerage business. Upon information and belief, Gill, Jr. and Nextgen

are, at the least, in possession of the Debtor's books and records and are in possession of, and using, the Debtor's assets, but more importantly, Nextgen could be the successors to the Debtor or are one and same. Accordingly, Gill Jr., as President of Nextgen and in his individual capacity should be compelled to appear for a Rule 2004 Exam and be compelled to produce the documents listed herein.

V. ARGUMENT

21. Rule 2004(a) of the Federal Rules of Bankruptcy Procedure (the "Rules") states that "[o]n motion of any party in interest, the court may order the examination of any entity".

22. Rule 2004(b) of the Rules states, in relevant part, "[t]he examination of an entity under this rule or of the debtor under §343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge".

23. Finally, Rule 2004(c) of the Rules states, in relevant part, "[t]he attendance of an entity for examination and *for the production of documents* . . . may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial".

24. Pursuant to Rule 2004, Gill Jr., as President of NextGen and in his individual capacity is subject to examination under Rule 2004 and may be compelled to produce documents.

25. The following facts support the Trustee's request to examine Gill, Jr. under Rule 2004:

- a. The Debtor operated its mortgage brokerage business from 3 locations:
 - i. 1031 Gold Street, Manchester, New Hampshire;
 - ii. 2 Main Street, Plaistow, New Hampshire; and,

- iii. 327 Amherst Street, Nashua, New Hampshire.
- b. Nextgen currently operates its mortgage brokerage business from the same 3 locations;
- c. Upon review of the Business Information listed for the Debtor on the New Hampshire Secretary of State's website, Gill Jr.'s email address, (mgilljr@themortgagespecialists.com), is listed as the Debtor's business email address. See Exhibit A;
- d. Upon information and belief, Gill Jr. was employed by the Debtor prior to forming Nextgen, and therefore would have insider knowledge of the Debtor's business operations;
- e. Upon information and belief, when calling Nextgen, the telephones are answered with the greeting "Mortgage Specialists";
- f. Upon information and belief, Nextgen uses the same customer list, telephone numbers, computers, computer software and employees as the Debtor did;
- g. A cursory review of the websites of the Debtor (which is still active) and that of Nextgen reveals nearly identical websites, marketing pitches and loan programs.
 - i. Both the Debtor and Nextgen offer the same five (5) "signature programs": Select Opportunity, Quarter Down, Debt Mastery Program, Term-Inator and Zero Points. See Exhibits B and C.
 - ii. The "marketing pitch" for these five (5) signature programs is identical – both websites even include the same grammatical mistake.

“As the housing market shows signs of recovery, you may be ready to jump at the first mortgage company that advertises a low interest rate. Trust us when we tell you doing such is rarely is (sic) a good idea. In fact, many housing markets have shifted in favor of home sellers recently, meaning you may face stiff competition. To appear more attractive to mortgage companies, you can get pre-approved for the best possible loan you can qualify for.” See Exhibits B and C.

- iii. Even more incredible is that when you print the Signature Programs page from NextGen’s website, the header on the printed page refers to “The Mortgage Specialists, Inc.”. See Exhibit C.
- iv. Both the Debtor and Nextgen websites, at the “About Us” section, offer the same personal marketing pitches by stating:

Whether you would like to meet in our office or your home, we are face to face. The method we use is personal assistance. We have found by sitting down with a client, we are able to understand their issues and where they would like to go, and be able to better help them get there.

Would you like to:

- Consolidate debt
- Shorten your term
- Are your children going to college?
- Are you worried about losing your job?
- Would a 30 year term help you instead of the higher payment that a 15 year term has?

We call our loan originators expert Mortgage Planners. We don’t want to sell you a home mortgage; we want to give you a plan. See Exhibits D and E.

- h. Gill Jr. is the son, an insider, of the principal of the Debtor.

26. Based upon the foregoing, there is sufficient cause and reason to allow the Trustee to take the 2004 Exam of Gill Jr. and compel Gill Jr. to produce documents prior to the 2004 Exam.

27. The Trustee intends to request the following documents from Gill Jr.:

- A. Statements, canceled checks, and deposit/withdrawal slips for any and all bank accounts, checking accounts, retirement accounts, brokerage accounts, and/or other financial accounts held by the Debtor or over which the Debtor has or had signature authority since January 1, 2015;
 - B. All records for any bank account(s), certificate(s) of deposit, stocks, bonds, safe deposit boxes, or other financial assets owned by the Debtor, or in which the Debtor has an interest or signatory authority, whether electronic or in paper form, including but not limited to, all statements, all deposits, all checks, all withdrawals, all signature cards, and all correspondence regarding same, from January 1, 2015 to the present;
 - C. All of the Debtor's state and federal tax returns, including any work papers associated therewith, filed since January 2015;
 - D. Any and all customer lists of the Debtor;
 - E. Any and all files related to or concerning the brokering of mortgages for consumers, customers and/or clients of the Debtor, including all consumer, customer and/or client files from January 1, 2017;
 - F. Any and all leases and/or contracts to which the Debtor is a party;
 - G. Any and all employee files for employees employed by the Debtor since January 1, 2017;
 - H. Any and all financial statements of the Debtor since January 1, 2015;
 - I. Any and all reports and/or statements detailing the mortgages brokered by the Debtor since January 1, 2017;
 - J. Any and all reports and/or statements detailing the mortgages the Debtor is currently processing; and,
 - K. Any and all accounts payable reports, lists and/or detail of the Debtor.
- (collectively, the "Documents").

28. As the foregoing requested discovery relates to the Debtor's acts, conduct, property, liabilities and financial condition of the Debtor and is otherwise necessary for the

proper administration of the Debtor's case, the request for the Documents is appropriate.

WHEREFORE, the Trustee requests an Order:

A. requiring Michael J. Gill, Jr. to appear, in his individual capacity and as the President of Nextgen, at the offices of Sheehan Phinney Bass & Green, 1000 Elm Street, Manchester, New Hampshire (counsel to the Trustee), on or before October 22, 2019, at 10 a.m. for examination pursuant to Rule 2004 of the Rules;

B. requiring Michael J. Gill, Jr. to produce, to Trustee's counsel, the Documents on or before October 15, 2019; and,

C. granting such further relief as the Court deems just.

MICHAEL S. ASKENAIZER, TRUSTEE

By his Proposed Attorneys,

Dated: September 16, 2019

SHEEHAN PHINNEY BASS & GREEN PA

By: /s/ James S. LaMontagne

James S. LaMontagne BNH 05221
Sheehan Phinney Bass + Green, PA
1000 Elm Street, P.O. Box 3701
Manchester, NH 03105-3701
Phone: (603) 627-8102

CERTIFICATE OF SERVICE

I hereby certify that on this 16th of September, 2019, a copy of the foregoing was served upon the parties listed below via first class mail, postage prepaid, or electronically upon those served by the CM/ECF system.

Michael S. Askenaizer
Trustee
Law Offices of Michael S. Askenaizer
29 Factory Street
Nashua, NH 03060

Kimberly Bacher
Office of the U.S. Trustee
53 Pleasant Street
Suite 2300
Concord, NH 03301

Daniel W. Sklar, Esq.
NixonPeabody LLP
900 Elm Street
Manchester, NH 03101

Michael Gill, Jr.
53 Baboosic Lake Road
Merrimack, NH 03054
(served via overnight mail and electronic mail:
mjgilljr@gmail.com)

/s/ James S. LaMontagne
James S. LaMontagne